

Sprout v. City of South Bend, 198 Ind. 563 (1926)

153 N.E. 504, 49 A.L.R. 1198



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Reversed by [Sprout v. City of South Bend, Ind.](#), U.S.Ind., May 14, 1928

198 Ind. 563

Supreme Court of Indiana.

SPROUT

v.

CITY OF SOUTH BEND.

No. 24695.

|
Oct. 14, 1926.**Synopsis**

Appeal from St. Joseph Circuit Court, W. A. Funk, Judge.

Action by the City of South Bend against Otis Sprout.
Judgment for plaintiff, and defendant appeals. Affirmed.

West Headnotes (5)

[1] **Commerce** ⚡ [Transportation or Movement of Goods or Persons](#)

Ultimate destination is always a factor but in itself not a determining factor in determining whether interstate commerce is involved.

[2] **Automobiles** ⚡ [Constitutionality and Validity of Acts and Ordinances](#)
Constitutional Law ⚡ [Trade, Business, Profession, or Occupation, Regulation Of](#)
Constitutional Law ⚡ [Carriers and Public Utilities; Railroads](#)

Ordinance requiring bus operator to obtain indemnity insurance from company authorized to do business in state held not to violate Const.Ind. art. 1, § 23, or U.S.C.A.Const. Amend. art. 14, § 1 in view of Burns'

Ann.St.Ind.1926, § 9129 (repealed 1935).

1 Cases that cite this headnote

[3] **Automobiles** ⚡ [Municipal Corporations](#)
Automobiles ⚡ [Eligibility for and Vehicles Subject to License or Certificate](#)

Motorbus, soliciting interstate passengers on streets, held "motor driven commercial vehicle" within ordinance and statute, so as to be subject to municipal regulations. Burns' Ann.St.1914, § 10476d.

[4] **Automobiles** ⚡ [Constitutionality and Validity of Acts and Ordinances](#)

Ordinance, authorized under Burns' Ann.St.1926, § 10284 (Burns' Ann.St. § 48-1407), requiring indemnity bond conditioned to pay for injuries as condition of doing business of carrier of passengers with jitney bus, and imposing license fee, held constitutional.

2 Cases that cite this headnote

[5] **Automobiles** ⚡ [Nature of Security](#)

Ordinance requiring bus operator to obtain indemnity insurance from company authorized to do business in state held authorized.

Attorneys and Law Firms

*504 Isaac Kane Parks, of Mishawaka, and Walter R. Arnold, of South Bend, for appellant.

Lewis W. Hammond, of South Bend, for appellee.

Opinion

EWBANK, J.

The question for decision in this case is the validity or invalidity of certain ordinances of the city of South Bend. The statute constituting the city charter authorizes cities "to regulate, tax and license coaches, hacks, drays, automobiles and all other vehicles," and "to license, tax and regulate public hackmen, draymen, omnibus drivers, carters, cabmen, porters, expressmen, bill-posters and all other persons pursuing like occupations for pay or hire." Clauses 32, 38, § 10284, Burns' 1926 (section 53, c. 129, Acts 1905, pp. 219, 252). And the Motor Vehicle Registration Act then provided that "no owner of a motor vehicle, except motor trucks and motor driven commercial vehicles" should be required to pay any municipal tax or license fee, in addition to the registration fee paid to the secretary of state, with a proviso that nothing in the act should be construed as affecting the power of municipal corporations to make and enforce ordinances, rules, and regulations affecting motor trucks and motor driven commercial vehicles used within their limits for public hire. Section 10476d, Burns' 1914 (section 17, c. 300, Acts 1913, pp. 779, 789).

Ordinance No. 2135 of the appellee city, adopted January 12, 1921, reads as follows:

"Every motor vehicle and electric vehicle operated by a person *** along and upon any public street or highway within the city of South Bend *** for the purposes of affording a means of local street or highway transportation by indiscriminately accepting and discharging such persons as may offer themselves for transportation, either at temporary street or highway parking places or along the course or within the territory on which said vehicle is or may be running or operating, *** is hereby declared to be a commercial vehicle (with exceptions as to taxicabs and hotel busses). *** No person *** shall operate any such commercial vehicle, commonly known as a jitney bus, and it shall be unlawful to do so, unless there shall have been filed with the city controller of said city a liability contract of insurance issued to such person *** by an insurance company, organized under the laws of the state of Indiana or authorized to transact business therein, providing *** for the payment of any final judgment that may be rendered against the insured for damages to property or bodily injury or death to others, resulting from accident or collision for which said person *** may be liable *** growing out of the negligent operation of such

commercial vehicle, in a sum not exceeding \$1,000.00 to any one person or \$2,500.00 to more than one person as a result of one accident. *** Any person *** shall pay to the city controller for the benefit of said city, for each commercial vehicle commonly known as a jitney bus to be so driven or operated, an annual license fee as follows, to wit: *** (b) \$50.00 for a vehicle having a rated seating capacity for more than seven and not more than twelve passengers. *** Any person *** upon conviction for the violation or failure to comply with any provisions of this ordinance, shall be fined in any sum not more than \$100.00. ***"

Without repealing this ordinance, but as supplementary thereto, the common council, on December 27, 1921, adopted another ordinance, numbered 2229, which (in part) provided as follows:

"Section 1. Every motor vehicle operated by a person *** along and upon any public street or highway within the city of South *505 Bend *** for the purpose of affording a means of street or highway transportation by indiscriminately accepting such persons as may offer themselves for transportation, from a point within the city of South Bend to a point outside the limits, *** and from a point without to a point within the city of South Bend, is declared to be, for the purpose of this ordinance, a commercial motor vehicle for hire (but excepting taxicabs and hotel busses). *** Section 3. It shall be unlawful for any person *** to operate a commercial vehicle as defined under section one of this ordinance on any street or avenue in the city of South Bend without first paying to the controller *** a license fee at the rate provided in section 5 of said ordinance number 2135 for commercial vehicles defined therein, *** and it shall be unlawful to operate such commercial vehicle without first filing with the controller a liability contract of insurance as provided in said ordinance number 2135 for commercial vehicles operating in the city of South Bend. Section 4. Any person *** upon conviction for the violation of or failure to comply with any provision of this ordinance shall be fined not more than \$100.00. ***"

A verified complaint by the city of South Bend alleged that on the 30th of May, 1923, "defendant, then being a resident of the said county of St. Joseph, and being at said time within the corporate limits of the said city of South Bend, did then and there operate a commercial vehicle upon a public street of said city without having first obtained a license from said city so to do, contrary to sections 1, 2, 3, and 4 of an Ordinance No. 2229 adopted by the common council of said city December 27, 1921." The evidence consisted of a stipulation of facts which, in

addition to setting out the ordinances at length, stated the following facts: That defendant resided in St. Joseph county, Ind., at the city of Mishawaka, which adjoins South Bend on the east. That daily for several months he operated between South Bend and Niles, in the state of Michigan, a motorbus for the transportation of passengers between those places (it is about four and one-half miles from the north city limits of South Bend to the Michigan state line, in which distance is one village and many suburban residences, and Niles is four or five miles north of the state line); that in the course of such transportation of passengers defendant entered within the corporate limits of the city of South Bend, "and there offered himself and his vehicle as instruments of transportation for passengers from said city of South Bend to the said city of Niles, Mich., and all points intermediate between (them) *** north of the state line, *** and in the solicitation of passengers for transportation, and in making contracts of passage, stated that he was engaged in effecting transportation only between points in the state of Indiana and points in the state of Michigan, but that, if passengers who were taken aboard his bus for transportation desired to leave the said bus prior to the passage from Indiana to Michigan, they were at liberty to do so, if the bus stopped, *** but they would be obliged to pay transportation to some point in Michigan; *** that it was defendant's practice, on said day and for several months prior thereto, on making stops after leaving the city of South Bend, to permit passengers who had taken passage to some point north of the state line between Indiana and Michigan to alight from said bus, and that they did so on numerous occasions (but that defendant did not take on his bus any passengers for transportation from one point in South Bend to another point within said city); that said bus was at all times a vehicle meeting and conforming to the definition of a 'commercial vehicle,' as used in Ordinance No. 2229, *** and that defendant, in the course of his said operations, did use the public highways within the city of South Bend; *** that the automobile bus operated by defendant as aforesaid had a capacity of twelve passengers; *** that defendant's said bus was assessed and taxed for state, county, township, and city purposes, at the residence of the defendant; *** that the defendant at no time made application for a license under either of said Ordinances 2135 or 2229, and did not at the times herein mentioned have or hold such license *** (but) the defendant had a license for the bus in question, and had paid to the secretary of state of the state of Indiana all license fees required directly by the statutes of the state."

The only reason suggested by appellant for insisting that the judgment appealed from was erroneous is that the ordinance alleged to have been violated and void. And the

only reasons he has offered for attacking its validity are that (a) it undertakes to regulate and impose burdens upon the business of transporting passengers in interstate commerce, in violation of the third clause of section 8, article 1, of the Constitution of the United States; that (b) it violates the statute, which forbids any city to impose taxes or license fees upon any motor vehicles, except motor trucks and motor-driven commercial vehicles used for public hire within the city; and that (c) by requiring a contract of indemnity insurance to be obtained from "an insurance company organized under the laws of the state of Indiana, or authorized to transact business therein," it undertakes to grant privileges and immunities to one class of citizens which do not belong equally to all citizens on the same terms in violation of section 23, article 1, of the Constitution of Indiana, and denies to appellant the equal protection of the laws, in violation of section 1, article 14, of the Amendments to the Constitution of the United States.

[1] Requiring an indemnity bond conditioned to pay all judgments recovered by *506 passengers for any negligent injuries they may sustain, as a condition of doing the business of a common carrier of passengers with a "jitney bus," did not violate any provisions of the Constitution, state or federal. Ex parte *Cardinal*, 170 Cal. 519, 150 P. 348, L. R. A. 1915F, 850, P. U. R. 1915E, 282; Ex parte *Sullivan*, 77 Tex. Cr. R. 72, 178 S. W. 537, P. U. R. 1915E, 441; Ex parte *Dickey*, 76 W. Va. 576, 85 S. E. 781, L. R. A. 1915F, 840 P. U. R. 1915E, 93; *City of Memphis v. State ex rel.*, 133 Tenn. 83, 179 S. W. 631, L. R. A. 1916B, 1151, Ann. Cas. 1917C, 1056, P. U. R. 1916A, 825; *Willis v. City of Fort Smith*, Ark. 121 Ark. 606, 182 S. W. 275; *Le Blanc v. City of New Orleans*, 138 La. 243, 70 So. 212; *Auto Transit Co. v. City of Ft. Worth* (Tex. Civ. App.) 182 S. W. 685; *Nolen v. Riechman* (D. C.) 225 F. 812; *Hazleton v. City of Atlanta*, 144 Ga. 775, 87 S. E. 1043; *Huston v. Des Moines*, 176 Iowa, 455, 156 N. W. 883; *Commonwealth v. Theberge*, 231 Mass. 386, 121 N. E. 30; *West v. City of Asbury Park*, 89 N. J. Law, 402, 99 A. 190; *Jitney Bus Assoc. v. City of Wilkes-Barre*, 256 Pa. 462, 100 A. 954; Ex parte *Parr*, 82 Tex. Cr. R. 525, 200 S. W. 404; *Hadfield v. Lundin*, 98 Wash. 657, 168 P. 516, L. R. A. 1918B, 909, Ann. Cas. 1918C, 942; *State ex rel. v. Dillon*, 82 Fla. 276, 89 So. 558, 22 A. L. R. 227, and note on page 230; *Packard v. Banton*, 264 U. S. 140, 144, 44 S. Ct. 257, 68 L. Ed. 596.

[2] Neither did the provision that the indemnity insurance should be obtained from a company authorized to do business in the state of Indiana make the ordinance unconstitutional. Any foreign indemnity insurance company having sufficient assets and doing a lawful

business can readily become qualified to write insurance in this state (section 9129, Burns' 1926 [section 1, c. 156, Acts 1905, p. 454]), and it does not appear that appellant was or could be prevented by this provision from obtaining indemnity insurance satisfactory to any other state into which he might carry passengers. [Lutz v. City of New Orleans \(D. C.\) 235 F. 978](#), affirmed, [237 F. 1018](#), [150 C. C. A. 654](#); [Puget Sound L. & P. Co. v. Grassmeyer](#), [102 Wash. 482](#), [173 P. 504](#), [L. R. A. 1918F, 469](#); [State v. Seattle Taxicab & T. Co.](#), [90 Wash. 416](#), [156 P. 837](#); *Ex parte Cardinal*, *supra*; *City of Memphis v. State ex rel.*, *supra*; note, [22 A. L. R. 233](#).

[3] But, even if he did receive passengers only for transportation across the state line, the use of the city streets as a place for the indiscriminate solicitation and acceptance of passengers in a jitney bus brought him within the police power of the state to license and regulate both driver and vehicle by way of providing for the safety, security, and general welfare of the public, so long, at least, as Congress has not legislated on the subject. [Hendricks v. Maryland](#), [235 U. S. 610](#), [622](#), [623](#), [35 S. Ct. 142](#), [59 L. Ed. 385](#), [390](#); [Kane v. New Jersey](#), [242 U. S. 160](#), [168](#), [37 S. Ct. 30](#), [61 L. Ed. 222](#); [Wiggins Ferry Co. v. East St. Louis](#), [107 U. S. 365](#), [2 S. Ct. 257](#), [27 L. Ed. 419](#); [Martine v. Kozer \(D. C. Or.\) 11 F. \(2d\)](#)

645.


[4] And the facts that he did not have any stations or soliciting agents and did not confine his use of the streets of the city to driving on and along them in carrying interstate commerce, but went upon them with his motor vehicle, and there offered the vehicle and his services generally for the use of patrons who would take passage and pay fare to a point in Michigan using the street both for the solicitation and receipt of passengers, brought his car within the description of a "motor driven commercial vehicle" and a "motor driven commercial vehicle used within the limits (of the city) for public hire," that may be charged license fees and subjected to regulations by the city, notwithstanding the certificate of registration issued by the secretary of state. Section 10476d, *supra*.

The judgment is affirmed.

All Citations

198 Ind. 563, 153 N.E. 504, 49 A.L.R. 1198

Citing References (16)

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	1. Sprout v. City of South Bend, Ind. 162 N.E. 54, 54 , Ind. Appeal from St. Joseph Circuit Court; W. A. Funk, Judge.	June 20, 1928	Case		—
Cited by	2. Ex parte Sepulveda 2 S.W.2d 445, 447+ , Tex.Crim.App. Appeal from District Court, Webb County; J. F. Mullally, Judge. Proceeding by Ignacio S. Sepulveda for writ of habeas corpus to secure petitioner's discharge from custody under a...	Jan. 18, 1928	Case		—
Cited by	3. Eastern Ohio Transport Corp. v. City of Wheeling 175 S.E. 219, 222 , W.Va. Appeal from Circuit Court, Ohio County. Suit by the Eastern Ohio Transport Corporation against the City of Wheeling and others. From an adverse decree, defendants appeal. Decree...	June 15, 1934	Case		—
Mentioned by	4. Farrell v. City of Mobile 156 So. 635, 637 , Ala. Appeal from Circuit Court, Mobile County; Claude A. Grayson, J. Blocker Thornton, and Norvell R. Leigh, Jr., Special Judges. Bill for injunction by the City of Mobile against...	June 21, 1934	Case		—
Mentioned by	 5. James v. Young 43 N.W.2d 692, 697+ , N.D. Gena James sued Robert W. Young, his wife, Stewart Doyle, Inc., Dallas Iverson, and the Hartford Accident and Indemnity Company for personal injuries sustained in a collision...	July 29, 1950	Case		—
—	6. State regulation of carriers by motor vehicle as affected by interstate commerce clause 47 A.L.R. 230 The reported case for this annotation is Haselton v. Interstate Stage Lines, 82 N.H. 327, 133 A. 451, 47 A.L.R. 218 (1926). This annotation is supplemented by 49 A.L.R. 1203, 62...	1927	ALR	—	—

Treatment	Title	Date	Type	Depth	Headnote(s)
—	<p>7. State regulation of carriers by motor vehicle as affected by interstate commerce clause 49 A.L.R. 1203</p> <p>The reported case for this annotation is Sprout v. City of South Bend, 198 Ind. 563, 153 N.E. 504, 49 A.L.R. 1198 (1926), reh'g denied, 198 Ind. 563, 154 N.E. 369, 49 A.L.R. 1198...</p>	1927	ALR	—	—
—	<p>8. State regulation of carriers by motor vehicle as affected by interstate commerce clause 62 A.L.R. 52</p> <p>The reported case for this annotation is Sprout v. City of South Bend, Ind., 277 U.S. 163, 48 S. Ct. 502, 72 L. Ed. 833, 62 A.L.R. 45 (1928). This annotation is supplemented by 85...</p>	1929	ALR	—	—
—	<p>9. Reasonableness and validity of requirement as to bonds from operators of jitney busses 22 A.L.R. 230</p> <p>The reported case for this annotation is State v. Dillon, 82 Fla. 276, 89 So. 558, 22 A.L.R. 227 (1921).</p>	1923	ALR	—	—
—	<p>10. West's A.L.R. Digest 48AK71, ¶ 71. Municipal corporations West's A.L.R. Digest</p>	2021	Other Secondary Source	—	—
—	<p>11. West's A.L.R. Digest 48AK73, ¶ 73. --Constitutionality and validity of acts and ordinances West's A.L.R. Digest</p>	2021	Other Secondary Source	—	—
—	<p>12. West's A.L.R. Digest 48AK78, ¶ 78. Eligibility for and vehicles subject to license or certificate West's A.L.R. Digest</p>	2021	Other Secondary Source	—	—
—	<p>13. West's A.L.R. Digest 48AK92, ¶ 92. Nature of security West's A.L.R. Digest</p>	2021	Other Secondary Source	—	—
—	<p>14. West's A.L.R. Digest 92K2926, ¶ 2926. Trade, business, profession, or occupation, regulation of West's A.L.R. Digest</p>	2021	Other Secondary Source	—	—
—	<p>15. West's A.L.R. Digest 92K3686, ¶ 3686. --Carriers and public utilities; railroads West's A.L.R. Digest</p>	2021	Other Secondary Source	—	—
—	<p>16. West's A.L.R. Digest 83K14.10(1), ¶ 14.10(1). In general West's A.L.R. Digest</p>	2021	Other Secondary Source	—	—

